

1 **COAST LAW GROUP, LLP**
2 MARCO A. GONZALEZ (SBN 190832)
3 LIVIA BORAK (SBN 259434)
4 1140 South Coast Highway 101
5 Encinitas, CA 92024
6 Ph: (760) 942-8505
7 Fx: (760) 942-8515
8 *email: marco@coastlawgroup.com*

9 Attorneys for Plaintiff and Petitioner,
10 COASTAL ENVIRONMENTAL RIGHTS FOUNDATION

11 SUPERIOR COURT FOR THE STATE OF CALIFORNIA
12 COUNTY OF SAN DIEGO, CENTRAL DISTRICT

13 COASTAL ENVIRONMENTAL RIGHTS) Case No.
14 FOUNDATION, INC., a California non-profit)
15 public benefit corporation;)
16)
17 Plaintiff and Petitioner,)
18)
19 v.) **VERIFIED PETITION FOR PEREMPTORY**
20) **WRIT OF MANDATE (C.C.P. §1085) AND**
21) **VERIFIED COMPLAINT FOR**
22 CITY OF SAN DIEGO, a California public) **DECLARATORY AND INJUNCTIVE**
23 agency;) **RELIEF**
24)
25 Respondent.) **(California Environmental Quality Act -**
26) **CEQA, California Coastal Act)**
27)
28)
29 LA JOLLA COMMUNITY FIREWORKS)
30 FOUNDATION, INC. a California non-profit)
31 public benefit corporation; PROMOTE LA)
32 JOLLA ,INC., a California non-profit corporation)
33 or business association;)
34)
35)
36 Defendants and Real Parties-in-Interest.)

37 Plaintiff and Petitioner Coastal Environmental Rights Foundation hereby petitions this court for a
38 Peremptory Writ of Mandate or Other Appropriate Writ under the Code of Civil Procedure 1085,
39 directed to Respondent City of San Diego, and hereby complains against the City and Real Party in
40 Interest La Jolla Community Fireworks Foundation as follows:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I.
INTRODUCTION

1. Petitioner and Plaintiff Coastal Environmental Rights Foundation brings this action to challenge the City of San Diego’s unlawful endorsement and approval of the discharge of fireworks from a coastal bluff at La Jolla Cove in the City of San Diego on July 4, 2010. This action arises out of the City’s prospective illegal issuance of a Special Event Permit or the City’s failure to require a mandatory Special Event Permit, and failure to require that the organizers of the proposed event comply with the California Environmental Quality Act (Public Resources Code §21000, et seq.) and the California Coastal Act of 1976 (Public Resources Code §30000, et seq.).

2. Defendants and Real Parties La Jolla Community Fireworks Foundation and Promote La Jolla, as well as predecessor organizers of the La Jolla Cove fireworks display (“the Event”) have never obtained legally required state environmental law approvals for their annual event. Other fireworks display organizers throughout the San Diego region (though not at issue in this action) have also failed to obtain required governmental approvals for fireworks displays on the coast and/or over bodies of water. Recent evolution of law relating to fireworks displays, coupled with a willingness by environmental groups to prosecute these claims, have clarified the aforementioned legal obligations and given rise to this action.

3. CERF believes, is informed, and hereby alleges, because the 4th of July is a patriotic holiday and the discharge of fireworks is considered a hallowed reflection of society’s collective patriotism, and because local and state governments have been politically unwilling to require compliance with various environmental laws applicable to fireworks displays with the potential to impact sensitive coastal resources, the annual La Jolla Cove fireworks events have been undertaken illegally for approximately the last 25 years.

4. This action is brought because CERF considers protection of the environment and the rule of law to be the true cornerstones of patriotism, freedom, and a successful democracy.

II.
THE PARTIES

5. Plaintiff and Petitioner Coastal Environmental Rights Foundation (CERF) is, and at all times herein mentioned has been, a non-profit public benefit corporation, organized and existing under

1 the laws of the State of California, with its principal place of business in Encinitas, California. CERF
2 meets all standing requirements for prosecuting this action. CERF is beneficially interested in the subject
3 matter of this petition for writ of mandamus and will be adversely affected by the environmental impacts
4 of this project.

5 6. CERF is an environmental organization dedicated to the protection and enhancement of
6 coastal natural resources and the quality of life for coastal residents, including the beaches, coastline and
7 ocean waters in and around La Jolla in San Diego, California. The interests CERF seeks to protect in this
8 Petition and Complaint are germane to its fundamental purpose. Members of CERF regularly use the
9 beaches and the ocean waters adjacent to the Event location for activities including but not limited to
10 surfing, swimming, kayaking, snorkeling, scuba diving, bird watching and identifying, and passively
11 enjoying nature. Thus, CERF has a geographical nexus with the affected environment and its members
12 are within the class of persons beneficially interested in the subject matter of this action.

13 7. The injuries of CERF, its members and their families and children are actual, concrete
14 injuries and would be redressed by the relief sought herein. CERF brings this action on its own behalf,
15 and on behalf of its members who live in California. The claims asserted and the relief requested in this
16 Petition and Complaint do not require that CERF's individual members directly participate as parties to
17 this lawsuit.

18 8. Respondent City of San Diego ("the City") is a California municipal corporation
19 organized and operating under the laws of the California Constitution. The City has land use jurisdiction
20 over the area where the Event will occur.

21 9. Real Party in Interest and Defendant La Jolla Community Fireworks Foundation, Inc.
22 ("LJCFF") is a California non-profit public benefit corporation with its principal place of business in La
23 Jolla, City of San Diego, California. LJCFF is a co-organizer of the La Jolla Cove 4th of July Fireworks
24 Celebration ("Event") and is responsible for obtaining necessary City approvals prior to the Event.

25 10. Real Party in Interest and Defendant Promote La Jolla, Inc. is a California Corporation
26 organized under the laws of the State of California with its principal place of business in La Jolla, City
27 of San Diego, California. Promote La Jolla markets and promotes business in and around the La Jolla
28 village. Promote La Jolla manages the La Jolla Village business improvement district. Promote La Jolla

1 is a co-organizer of the La Jolla Cove 4th of July Fireworks Celebration (“Event”) and is responsible for
2 obtaining necessary City approvals prior to the Event. Promote La Jolla applied for and received a City
3 Park Use Permit for the Event.

4 **III.**
5 **JURISDICTION AND VENUE**

6 11. Jurisdiction is proper under Code of Civil Procedure sections 1085, 1094.5, 187, and 526
7 and Public Resources Code sections 21167(a), 21168.5 and 30800 et seq.

8 12. Venue is proper pursuant to Code of Civil Procedure section 393. The proposed Event is
9 located in the City of San Diego, and the City acts as lead agency in approving the Project pursuant to
10 Public Resources Code section 21067.

11 13. Petitioners have complied with the requirements of Public Resources Code section
12 21167.5 by mailing a written notice of the commencement of this action to the City prior to the filing of
13 this Petition. A copy of the prior written notice provided to the City, with proof of service thereof is
14 attached hereto as Exhibit A.

15 **IV.**
16 **STATEMENT OF FACTS**

17 **The California Coastal Act of 1976**

18 14. The California Coastal Act of 1976 (Public Resources Code § 30000, et seq.) (“Coastal
19 Act”) was enacted by the California Legislature because, in part, “to promote the public safety, health,
20 and welfare, and to protect public and private property, wildlife, marine fisheries, and other ocean
21 resources, and the natural environment, it is necessary to protect the ecological balance of the coastal
22 zone and prevent its deterioration and destruction.” (Pub. Res. Code §30001(c)).

23 15. In enacting the Coastal Act, the Legislature created the California Coastal Commission
24 (“CCC”) in order to, among other things, “assure the long-term productivity and economic vitality of
25 coastal resources necessary for the well-being of the people of the state, and to avoid...a diminished
26 quality of life resulting from the misuse of coastal resources. (*Id.* at §30004(b)).

27 16. The Coastal Act grants to the CCC the primary responsibility for state coastal zone
28 planning and management. *Id.* at §30330. The coastal zone is defined as that land and water of the State
of California ... extending seaward to the state’s outer limit of jurisdiction and extending inward

1 generally 1,000 yards from the mean high tide line of the sea. (*Id.* at §30103(a)).

2 17. With limited exception, any entity seeking to undertake any “development” in the coastal
3 zone must obtain a permit from the CCC. (*Id.* at §30600). “Development” under the Coastal Act is
4 defined, in part, as follows: “‘Development’ means, on land, in or under water, the placement or erection
5 of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid,
6 solid, or thermal waste; ... change in the intensity of use of water, or of access thereto; construction,
7 reconstruction, demolition, or alteration of the size of any structure, including any facility of any private,
8 public, or municipal utility; ... [¶] As used in this section, “structure” includes, but is not limited to, any
9 building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission
10 and distribution line.” (*Id.* at §30106). The San Diego Municipal Code definition of “development”
11 mirrors this definition. (San Diego Municipal Code (“SDMC”) at §113.0103).

12 18. Each local government lying in whole or in part within the coastal zone is to prepare a
13 “local coastal program” for that portion of the coastal zone within its jurisdiction. A “local coastal
14 program” is defined, in part, as a local government’s land use plans, zoning ordinances and zoning
15 district maps (§30108.3) and, must conform with the Coastal Act’s provisions for, among other things,
16 the protection of public access to coastal resources (§§30210-30214), the maintenance, enhancement,
17 and restoration of marine resources (§§30230-30236), and the protection of environmentally sensitive
18 habitat areas (§30240). (*Id.* at §30512.1©)). The “local coastal program” of a local government must be
19 submitted to the CCC for certification (§30512.2) including all implementing ordinances (§30513).

20 19. Once a “local coastal program” is certified by the CCC, all new development proposed
21 within the area to which the certified “local coastal program” applies is delegated to the local
22 government. (*Id.* at §30519).

23 24 **The City of San Diego’s Local Coastal Program for the La Jolla Area**

25 20. The CCC certified the City of San Diego’s La Jolla Community Plan and Local Coastal
26 Program Land Use Plan (“La Jolla LCP” or “LCP”) on February 19, 2004. Upon certification of the
27 LCP, the Coastal Commission delegated to the City authority to issue coastal development permits,
28 which it does pursuant to Chapter 16, Article 6, Division 7 of the San Diego Municipal Code.

1 21. La Jolla is considered by some to be the crown jewel of the City’s coastal areas. It
2 contains significant sensitive natural resources, and a well established urban center catering to a diverse
3 population of local residents and year-round tourists. The La Jolla LCP seeks to balance the regulation of
4 coastal development and natural resource protection.

5 22. In doing so, the document contains substantive goals; *to wit*, “Preserve the natural
6 amenities of La Jolla such as its open space, hillsides, canyons, bluffs, parks, beaches, tidepools and
7 coastal waters.” (LCP at p.39). The LCP also notes, “the entire coastline of La Jolla ... is considered an
8 important sensitive coastal resource.” (LCP at p.41).

9 23. The LCP reflects that in 1970 the City Council dedicated the San Diego-La Jolla
10 Underwater Park consisting of 5,977 acre of tidal and submerged land between La Jolla Cove and the
11 northern boundary of the City. This unique underwater City park was established “to protect and
12 conserve all aspects of the marine environment including marine plants and animals, geological
13 formations, archaeological artifacts and scenic resources.” (LCP at Appendix I, p.188). In 1971, the City
14 established a 514-acre ecological preserve within the Underwater Park, and formally designated it a
15 “Look-Don’t Touch” area. (*Id.*) The LCP mandates that the San Diego-La Jolla Ecological Reserve is to
16 be preserved in a natural condition for the benefit of the general public and subject to strict regulations
17 including a prohibition against any take of plant, bird, mammal, fish, mollusk, crustacean, reptile or any
18 other form of plant life. (*Id.*) The under water park and ecological reserve are extremely sensitive coastal
19 resources.

20 24. Also immediately to the north of La Jolla Cove is a stretch of coastline and water
21 designated by the state as the “La Jolla Area of Special Biological Significance.” Public Resources Code
22 section 36700(f) provides that Areas of Special Biological Significance (“ASBS”) are a subset of State
23 Water Quality Protection Areas requiring special protection as determined by the State Water Board
24 pursuant to the [California] Ocean Plan. Public Resources Code section 36710(f) requires that waste
25 discharges in the ASBS be prohibited or limited by the imposition of special conditions in accordance
26 with the California Water Code and implementing regulations, including, but not limited to, the Ocean
27 Plan. The La Jolla ASBS is a sensitive coastal resource into which discharges of any pollutants are
28 strictly prohibited.

1 25. Within the La Jolla LCP jurisdiction area just south of La Jolla Cove near the intersection
2 of Coast Blvd. and Jenner Street is a beach area known as “the Children’s Pool.” The Children’s Pool is
3 the site of a harbor seal rookery and haul-out. The beach area of the Children’s Pool is a sensitive coastal
4 resource, and the seals there are sensitive biological resources, protected by, among other things, the
5 federal Marine Mammal Protection Act of 1972 As Amended (Pub. L. 92-522, 16 U.S.C. §§ 1361 et
6 seq.)

7
8 **The La Jolla Cove Fireworks Event and City Permitting**

9 26. For approximately 25 years, fireworks events have been conducted at the La Jolla Cove.
10 Typically, the La Jolla Cove fireworks are discharged from a bluff-top location within Ellen Browning
11 Scripps Park, immediately adjacent to Boomer Beach and ocean waters in and around La Jolla Cove.
12 The public is allowed to watch the fireworks displays free of charge, and they do so from the beach, the
13 water, the park, the sidewalk and streets, and various buildings surrounding the area. Tens of thousands
14 of people attend the La Jolla Cove fireworks shows each year. Many streets of downtown La Jolla and in
15 the vicinity La Jolla Cove are at or near complete traffic gridlock for at least one half-hour before,
16 during, and immediately following the events.

17 27. In 2009, the individual who for many years had organized and paid for the La Jolla Cove
18 fireworks decided not to proceed with the event. In response, the current officers of the La Jolla
19 Community Fireworks Foundation conducted a last minute fund raising campaign to put on the 2009
20 show. Subsequently, these individuals formed the non-profit La Jolla Community Fireworks Foundation
21 to “promote patriotism and community spirit by preserving the annual Fourth of July observance for the
22 community of La Jolla and the citizens of San Diego County, California, through the presentation of a
23 fireworks display and concert.” (LJCFF website, www.lajollafireworks.org)

24 28. The City typically requires fireworks event promoters at the La Jolla Cove to obtain
25 certain permits including a Firework/Pyrotechnic Permit approved by the San Diego Fire-Rescue
26 Department, a Park Use Permit approved by the Park and Recreation Department, and a Citywide
27 Special Events Permit approved by the Office of Special Events. Promote La Jolla has sought and been
28 issued a Park Use Permit for the Event.

1 29. The City has not required that La Jolla Cove Event promoters LJCFF/Promote La Jolla
2 obtain Coastal Act coastal development permits or federal Clean Water Act National Pollutant
3 Discharge Elimination permits. The City also has not required Event promoters to comply with the
4 California Environmental Quality Act (Public Resources Code §§21000 et seq. (“CEQA”).

5 30. Firework events in close proximity to coastal beaches result in the release of pollutants to
6 beaches and coastal surface waters including aluminum, magnesium, strontium, barium, sodium,
7 potassium, iron, copper, sulfate, nitrate, and perchlorate. Firework events also result in the release to
8 surface waters of debris from exploded and unexploded shells such as paper, cardboard, wire and fuses.
9 As a result of these recognized potentially significant environmental impacts, the San Diego Regional
10 Water Quality Control Board (“Water Board”) considers pollutant releases from firework events over or
11 adjacent to surface waters as “point source discharges of pollutants” subject to the NPDES permit
12 requirements of the federal Clean Water Act. The Water Board has waived permit requirement for
13 discharges of fireworks over land, but this waiver does not apply to fireworks displays with the potential
14 to impact surface waters.

15 31. The discharge of fireworks results in extremely loud noises and bright lights at the
16 Children’s Pool. The seals at the Children’s Pool are protected under the federal Marine Mammal
17 Protection Act, which precludes the “take” of any seal. “Take” is defined to include harassment.
18 Fireworks displays in close proximity to seals constitute harassment under the Marine Mammal
19 Protection Act.

20 32. CERF has written multiple letters to the City alleging, collectively, failures by the City to
21 comply with CEQA, the Coastal Act, the federal Clean Water Act, and the California Water Code ASBS
22 discharge prohibitions. CERF has exhausted its administrative remedies.

23 33. CERF was informed on June 25, 2010 that Promote La Jolla is a co-organizer of the
24 Event, and that Promote La Jolla has been issued a Park Use Permit for the Event.

25 **V.**
26 **PRELIMINARY ALLEGATIONS**

27 34. Plaintiff and Petitioner CERF refers to and alleges all of the above paragraphs and by this
28 reference incorporates those paragraphs as if fully set forth at length.

1 35. The City must issue a Special Event Permit before the Event can take place on July 4,
2 2010. CERF is informed and believes, and thereupon alleges, as of the filing of this Complaint and
3 Petition, no complete Special Event Permit application has been submitted to the City Office of Special
4 Events. San Diego Municipal Code section 22.4004 (a) requires a Special Event Permit for anyone to
5 conduct a “Special Event.” Municipal Code section 22.4002 defines “Special Event” to include any
6 organized assemblage of 75 or more persons at any public park to gather for a common purpose under
7 direction or control of an event promoter. The definition of “Special Event” in the Municipal Code also
8 includes any organized activity conducted for a common or collective use that would have an impact on
9 public property and require the provision of City public safety services in response thereto.

10 36. The Parks and Recreation Department Special Event Request Application (which is
11 different than the Citywide Special Events Permit application) for Park Use Permit issued to Promote La
12 Jolla indicates there will be “10k?[sic]” people in attendance at the Event. CERF’s members’ experience
13 is that this is a gross underestimation, by approximately one third, of the number of attendees to the
14 annual event.

15 37. The Special Event Request Application also indicates there will be road or parking lot
16 closures associated with the Event. Rather than identify the closures, the application simply indicates,
17 “See SDPD.” CERF understands “SDPD” to mean the San Diego Police Department. The Event,
18 therefore will impact public property (Scripps Park) and require the provision of City public safety
19 services (SDPD and San Diego-Fire Rescue). The Event is clearly a “Special Event” as defined and
20 contemplated by the Municipal Code.

21 38. The website for the City’s Office of Special Events lists at least 7 other fireworks events
22 for which Special Events Permits have been required and/or issued. The Event is not listed on the
23 website. The City has a pattern and practice of avoiding its duties under CEQA for fireworks shows over
24 water throughout the City.

25 39. The City has intentionally acted to withhold information from CERF regarding the true
26 name of Event applicant(s) and nature of the Event.

27 40. San Diego Municipal Code section 2.4009(a) mandates that an “application for a Special
28 Event Permit shall be filed with the City Manager no less than sixty (60) calendar days... before the time

1 when it is proposed to conduct the Special Event.” No such application was filed. There will not be
2 enough time between the issuance of a Special Event Permit and the date scheduled for the Event for the
3 matter to be briefed and heard by the Court.

4 41. CERF is informed and believes, and thereupon alleges the City intends to allow the Event
5 to take place without a Special Event Permit.

6 42. The La Jolla Cove fireworks event is a "project" under CEQA in that it is "an activity
7 which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect
8 physical change in the environment," and which involves the issuance of a permit by the City. (Pub. Res.
9 Code § 21065; CEQA Guidelines §15378). The Event is also a "private project" in that it will be carried
10 out by a non-governmental entity but requires a discretionary approval by the City. (CEQA Guidelines §
11 15377).

12 43. The decision by the City to issue a Special Event Permit is a "discretionary project,"
13 because it is a project requiring the exercise of judgment or deliberation by the City prior to Event
14 approval. Issuance of a Special Event Permit by the City is not "ministerial" because it is not a
15 circumstance where the City merely has to determine whether there is conformity with relevant statutes,
16 ordinances or regulations. (CEQA Guidelines §§ 15357, 15369). CEQA generally applies to
17 discretionary projects proposed to be approved by a public agency. (Pub. Res. Code §21080(a)). CEQA
18 applies to the La Jolla Cove Fireworks event.

19 44. The decision by the City to issue a Special Event Permit includes authority to “set
20 reasonable boundaries for the Special Event Venue, balancing the Special Event requirements and public
21 health, safety, and welfare.” (SDMC §22.4004). The City has the discretion to deny a Special Event
22 Permit, among other reasons, if the Event will violate public health or safety laws, or if it fails to
23 conform to the requirements of law. (*Id.* §22.4014(b)(2-3)).

24 45. The Event is not exempt from CEQA. The City cannot, as a matter of common sense,
25 determine with certainty that there is no possibility that the Event may cause a significant effect on the
26 environment.

27 46. The City has not required, and LJCF/Promote La Jolla have not achieved, compliance
28 with the mandates of CEQA. The City must prepare an Environmental Impact Report whenever a project

1 “may have a significant effect on the environment.” (Pub. Res. Code §§21100,21151). Substantial
2 evidence has been submitted to the City to support a fair argument that the Event may have a significant
3 effect on water quality, environmentally sensitive lands, and sensitive biological resources. The City has
4 not required production of an Environmental Impact Report.

5 47. Insufficient time exists before the Event is scheduled to take place for the City to prepare
6 and adopt an Environmental Impact Report.

7 48. The City has not prepared an Initial Study as required by CEQA Guidelines section
8 15063.

9 49. The City has not provided an opportunity for public review and comment on any
10 document prepared pursuant to CEQA, and has not conducted any public hearing or publicly noticed its
11 decision that CEQA does not apply to Event.

12 50. Persons proposing fireworks displays in areas of the City’s coastal zone, including
13 Defendants LJCF and Promote La Jolla, have a legal duty to apply for a coastal development permit
14 (“CDP”). (*Gualala Festivals Committee v. California Coastal Commission*, 183 Cal. App. 4th 60; SDMC
15 Chapter 12, Article 6, Division 7). LJCF has not applied for a CDP.

16 51. The Event is not exempt from the requirement to obtain a CDP, and even if it were,
17 Defendant LJCF’s failure to apply for a CDP is a violation of the Coastal Act, the LCP, and/or the San
18 Diego Municipal Code.

19 52. The Event is a “temporary event” which does not qualify for a CDP exemption because it
20 will both directly and indirectly impact “environmentally sensitive lands.” (SDMC126.0704).

21 53. City issuance of a Park Use Permit for the Event was a discretionary action triggering
22 CEQA requirements noted herein as applicable to issuance of a Special Use Permit for the Event.

23 **VI.**
24 **FIRST CAUSE OF ACTION**
(Writ of Mandate: C.C.P. §1085)

25 54. Plaintiff and Petitioner refers to and alleges all of the above paragraphs and by this
26 reference incorporates those paragraphs as if fully set forth at length.

27 55. The City has a mandatory duty to comply with CEQA. The City’s issuance of a Special
28 Event Permit and/or a Park Use Permit without preparation of an initial study, mitigated negative

1 declaration, or environmental impact report constitutes a violation of CEQA warranting issuance of a
2 writ of mandate.

3 56. The City's failure to require a Special Event Permit does not suffice to render the Event
4 exempt from CEQA. The City has a mandatory duty to require a Special Event Permit.

5 57. The City has a mandatory duty to prohibit the Event unless a CDP is issued. The failure to
6 require a CDP constitutes a violation of the Coastal Act, the San Diego Municipal Code Chapter 12,
7 Article 6, Division 7, and the LCP.

8 58. If the City is not required to conduct CEQA before issuance of the Special Event Permit
9 or Event approval, then both CERF and the general public will be irreparably harmed due to the
10 significant impacts on coastal resources, and the lack of a public process for participating in the City's
11 determinations regarding likelihood of such impacts.

12 59. CERF does not have another plain, speedy, and adequate remedy at law because if and
13 when the City issues a Special Event Permit to Promote La Jolla and/or LJCFF, it will be too late for
14 legal challenge. Because insufficient time exists for the City to achieve CEQA compliance, a writ of
15 mandate is appropriate at this time.

16 **VII.**
17 **SECOND CAUSE OF ACTION**
18 **(Declaratory Relief)**

19 60. Plaintiff and Petitioner refers to and alleges all of the above paragraphs and by this
20 reference incorporates those paragraphs as if fully set forth at length.

21 61. An actual controversy exists between CERF and LJCFF/Promote La Jolla as to whether
22 the Event is exempt from the requirement to apply for and obtain a CDP under the San Diego Municipal
23 Code. CERF, as alleged above, argues that a CDP is required because the Event constitutes coastal
24 development that will directly or indirectly impact environmentally sensitive lands. CERF also argues
25 that the Event does not qualify for an exemption to the CDP requirement. Counsel for LJCFF has sent
26 correspondence to the City arguing that a CDP is not required. LJCFF has not applied for a CDP or an
27 exemption.

28 62. An actual controversy exists between CERF and the City, and between CERF and
LJCFF/Promote La Jolla as to whether the Event requires a Special Event Permit pursuant to the

1 Municipal Code. Counsel for LJCFE has sent correspondence to the City’s Office of Special Events
2 requesting that a Special Event Permit be issued.

3 63. A controversy also exists as to whether the City must comply with CEQA before it can
4 issue a Special Event Permit or Park Use Permit for the Event, and whether sufficient time remains for
5 compliance if CEQA does apply.

6 64. CERF requests a judicial determination that LJCFE and Promote La Jolla must apply for
7 a CDP or exemption pursuant to the San Diego Municipal Code and LCP before it can legally conduct
8 its event.

9 65. CERF also requests a judicial determination that issuance of either a Park Use Permit or a
10 Special Event Permit for the Event constitutes a discretionary project subject to the mandates of CEQA,
11 and that insufficient time remains before the 4th of July for the Event to come into compliance with the
12 law.

13 66. CERF also requests a judicial determination that the Event is a “Special Event” requiring
14 a Special Event Permit pursuant to the Municipal Code.

15 67. CERF also requests a judicial determination that the City has a pattern and practice of
16 failing to comply with CEQA in conjunction with its approvals of fireworks displays throughout the
17 City.

18 **VIII.**
19 **SECOND CAUSE OF ACTION**
20 **(Injunctive Relief)**

21 68. Plaintiff and Petitioner refers to and alleges all of the above paragraphs and by this
22 reference incorporates those paragraphs as if fully set forth at length.

23 69. Unless enjoined and restrained by order of the Court from issuing the Special Event
24 Permit or otherwise approving the Event, the City will illegally permit the discharge of toxic metals and
25 trash into the Area of Special Biological Significance, the San Diego-La Jolla Underwater Park, and the
26 San Diego-La Jolla Ecological Reserve immediately offshore of La Jolla Cove. Unless enjoined and
27 restrained, the LJCFE and Promote La Jolla will cause significant impacts to sensitive coastal beaches,
28 water quality, and the protected seal rookery at the Children’s Pool.

70. CERF’s member, and the general public, will suffer significant and irreparable harm if

1 the City can simply allow an Event promoter to obtain a Special Event Permit or Park Use Permit for a
2 fireworks display over coastal waters without having to apply for a CDP or CDP exemption.

3 71. CEQA is intended to inform decision makers and the public of potentially significant
4 environmental impacts before approvals for projects are given. Unless the Event is enjoined and
5 restrained pending CEQA compliance, the public and decision makers will be deprived of crucial
6 information, and the public will be robbed of its statutory right to participate in such considerations.

7 72. CERF requests injunctive relief in the form of an Order from the Court that: (a) the City
8 must not issue a Special Event Permit because insufficient time exists for it to comply with CEQA, or in
9 the alternative, (b) if issued, the Special Event Permit must be rescinded for failure to comply with
10 CEQA. CERF further requests injunctive relief in the form of an Order from the Court that the Park Use
11 Permit be set aside for failure to comply with CEQA and that LJCF and Promote La Jolla be enjoined
12 from conducting the Event.

13 **IX.**
14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiff and Petitioner CERF prays:

16 1. For a Peremptory Writ of Mandate to be issued under Code of Civil Procedure section
17 1085 ordering the City to refrain from issuing a Special Event Permit for the La Jolla Cove 4th of July
18 fireworks display, or if a Special Event Permit has already been issued, to rescind such permit until such
19 time in the future when CEQA compliance is achieved.

20 2. For a Peremptory Writ of Mandate to be issued under Code of Civil Procedure section
21 1085 ordering the City to rescind and set aside all approvals related to the Event for failure to comply
22 with CEQA, and ordering the City to comply with CEQA for all future fireworks shows over water.

23 3. For an immediate stay enjoining the City from all activities, approvals, and permit
24 processing related to the La Jolla Cove 4th of July fireworks.

25 4. For an immediate stay enjoining the LJCF and Promote La Jolla from conducting the
26 Event.

27 5. For a judicial declaration that a Special Event Permit is required, and issuance of a
28 Special Event Permit for the Event requires compliance with CEQA, and that not enough time remains

1 for CEQA compliance prior to the event.

2 6. For a judicial declaration that Defendant LJCFE was required to apply for a Coastal
3 Development Permit or exemption from Coastal Development Permit.

4 7. For reasonable attorneys' fees pursuant to C.C.P. 1021.5.

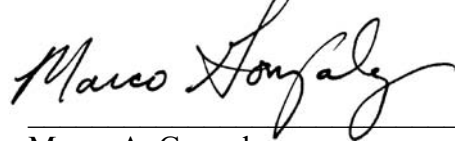
5 8. For costs of suit.

6 9. For an award of civil penalties against the City, LJCFE, and Promote La Jolla, in an
7 amount to be proven at trial, pursuant to Public Resources Code section 30805.

8 10. For such other relief as the Court considers just and proper.

9
10 DATED: June 25, 2010

COAST LAW GROUP LLP

11 

12 _____
13 Marco A. Gonzalez
14 Attorney for Petitioner,
15 COASTAL ENVIRONMENTAL
16 RIGHTS FOUNDATION

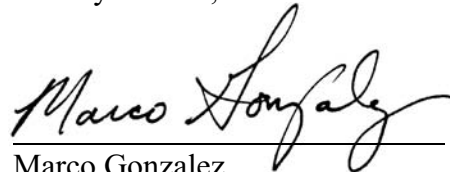
17 **VERIFICATION**

18 I, Marco A. Gonzalez, declare:

19 I am an Officer, to wit; Executive Director of the Coastal Environmental Rights Foundation, a
20 California public benefit corporation organized and existing under the laws of California. CERF is the
21 Plaintiff and Petitioner in the above-entitled action, and I have been authorized to make this verification
22 on its behalf.

23 I have read the foregoing Petition for Writ of Administrative Mandamus and Complaint for
24 Injunctive and Declaratory Relief and know the contents thereof, except as to those matters which are
25 alleged on information and belief, and as to those matters I believe them to be true.

26 I declare under penalty of perjury, under the laws of the State of California, that the foregoing is
27 true and correct and that this verification was signed on the 25th day of June, 2010 in Encinitas,
28 California.

29 

30 _____
31 Marco Gonzalez
32 Executive Director, CERF